considered whether the offer was genuine and if the wife refused, whether she has sufficient reasons for refusing to live with her husband. In that case the learned magistrate failed to make the necessary finding of facts and the appellate court sent the case back for re-trial.

With respect, however, in the present case it would not be necessary to send it back for re-trial, for the purpose of finding out whether the wife had refused to live with the husband and if so her reasons for doing so. As I have already stated in dealing with the previous grounds of appeal, there was no question before these proceedings commenced of the wife refusing to go and live with the husband. For her refusal to go and live now or rather after the proceedings began, in my view she had good grounds for refusing to do so. The evidence showed that they had been living too long apart. There was no serious attempt during that period by the husband to take back his wife or his children, all of whom had been living with the wife's parents without any support from him. Notwithstanding what he had stated before the magistrate it was evident that he could not have been serious or genuine in his offer to take her back. On the contrary until the proceedings had started he had all the time wanted a separation from his wife and to use his own words a separation that "would for all intents and purposes dissolve the marriage." In the circumstances, it is my view that the wife had good grounds for refusing to go and live with him now.

I would therefore dismiss the appeal with costs.

Suffian and **Ali F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.; Joginder Singh & Co.*

DR. NG AH KOW & ANOR. v. DR. LOW SHIK AUN

[O.C.J. (Yong J.) July 31, 1970]

[Kuala Lumpur — Originating Summons No. 376 of 1969]

Arbitration — Application to enforce summarily an arbitrator's award — Validity of award doubtful — Arbitration Ordinance, 1950, s. 13.

This was an application for leave to enforce summarily an arbitrator's award given in favour of the applicants and against the respondent.

Held: in this case the validity of the award made by the arbitrator was so doubtful and the case was so far from clear that leave to enforce the award summarily should be refused and the successful parties to the award should be left to their remedy to enforce it by action.

Cases referred to:-

(1) *Re Boks & Co. and Peters Rushton & Co. Ltd.* [1919] 1 K.B. 491.

(2) *Grech* v. *Board of Trade* (1923) 92 L.J. Rep. 956.

(3) *Union Nationale des Co-operatives Agricoles de Cereales* v. *Robert Catterall & Co. Ltd.* [1959] 1 All E.R. 721 at p. 725.

The following cases were also cited in argument: *Tandy* v. *Tandy* (1841) 9 Dowl. 1044; *Porter* v. *Porter* (1921) 55 I.L.T. 206; *Boodle* v. *Davies* (1835) 3 A. & E. 200; *Seccombe* v. *Babb* (1840) 6 M. & W. 129; *Price* v. *Popkin* (1839) 10 A. & E. 139; *Ross* v. *Boards* (1838) 8 A. & E. 290; *Wood* v. *Wilson* (1835) 2 C.M. & R. 241; *Belfield* v. *Bourne* [1894] 1 Ch. 521.

ORIGINATING SUMMONS.

Lim Kean Chye (*T. P. Wong* with him) for the applicants.

P. Mooney for the respondent.

Cur. Adv. Vult.

Yong J.: This is an application under section 13 of the Arbitration Ordinance 1950 for leave to enforce summarily an arbitrator's award given in favour of the applicants and against the respondent.

By a partnership agreement dated May 1, 1968 the respondent a medical practitioner practising under the name of "S.A. Low Clinic and Surgery" agreed to take into his firm the applicants as his partners and to sell to them 50% of his interest at the price of $37,500 of which $5,000 was paid and the balance to be paid by monthly instalments.

Before the instalments could be completely paid off this agreement was superseded by a second partnership agreement whereby one Dr. Lim was admitted as an additional partner into the firm under certain terms and conditions.

It is not disputed that under this second agreement the applicants, the respondent and Dr. Lim respectively held 44%, 36% and 20% of the interest in the firm and by paragraph (8) thereof, the applicants agreed to pay the respondent the sum of $44,000 of which $16,500 had been paid on or before the execution of the agreement and the balance of $27,500 was to be paid by monthly instalments. The first instalment of $1,500 was paid on August 15, 1969 leaving a balance of $26,000 still due and owing by the applicants to the respondent on the crucial date of September 19, 1969 when the partnership broke up and its business closed down.

Before its breaking up Dr. Lim on August 29, 1969 retired from the partnership and sold half of his 20% interest to the applicants and the remaining half to the respondent so that as from that date the applicants became owners of 54% and the respondent 46% of the shares in the firm.

The partnership was doomed to failure from the beginning. If the partners had thought a little more of their integrity and a little less of self-interest the partnership might have survived. However that was not to be. The retirement of Dr. Lim did not ease the tension that existed between the remaining partners. There were charges and counter-charges against each other for pilfering cash from the till and drugs from the store. The bickering of the partners and the smouldering fire between them finally erupted into a violent flame on September 19, 1969 when Dr. Lee was locked in and her husband Dr. Ng was locked out from the clinic by Dr. Low. In order to protect herself from Dr. Low, as she claimed, she relocked herself

in the inner sanctum of the clinic and made frantic efforts to secure assistance by telephone. Help finally came. Through the gallant efforts of Dr. Tan Chee Khoon the main door or gate of the clinic was unlocked and Dr. Lee agreed to leave the premises of the clinic; and the partnership virtually came to an end and the clinic closed down.

On October 19, 1969, Dr. Low the respondent re-opened the clinic for his own purpose and for his own benefit under the same roof and in the same name of "S.A. Low Clinic and Surgery". In the meanwhile the applicants worked for another medical firm as *locum tenens*.

The dispute between the partners was referred to arbitration and Dr. Tan Chee Khoon was appointed the sole arbitrator. From the "statement of issue" (Appendix C and D) submitted for arbitration by the parties it would appear that the main issue before the arbitrator for his decision was whether the expulsion of the applicants from the partnership on September 19, 1969 was or was not wrongful, and if wrongful what compensation or damages should be awarded to them and in assessing the *quantum* the value of the tenancy of the premises occupied by the clinic and the goodwill of the partnership business were to be taken into consideration. At page 7 of the award the arbitrator himself had under the heading of "issues before the arbitrator" stated that the issues before him were: —

(1) expulsion

(2) tenancy and

(3) goodwill.

On these issues he held that the expulsion of the applicants from the partnership was not justified, the respondent had conspired with his brothers the landlords, to evict the partnership firm from the premises and the goodwill of the business formed part and parcel of the partnership assets.

After making these findings the arbitrator instead of proceeding to assess the damages for wrongful expulsion, proceeded to order, rightly or wrongly, the "dissolution of the partnership immediately", meaning as from the date of the award on November 19, 1969. Counsel for respondent contended that the arbitrator in so doing had exceeded his jurisdiction and the award was bad in law as the partnership had already come to an end on September 19, 1969.

With only affidavits before the court and without the full facts and evidence which a court would have in an action, it is not clear why, even if dissolution was an issue before him, the arbitrator had not ordered dissolution as from September 19, 1969 when the partnership came to an end nor is it clear why instead of awarding damages for wrongful expulsion which was an issue before him, he ordered the distribution of the partnership assets in accordance with the shares held by the parties as if there was no wrongful expulsion at all. It is equally not clear why the arbitrator had not included in its assets the wrongful gains and profits made by Dr. Low when he reopened the clinic on October 19, 1969 and by Dr. Ng and Dr. Lee when they acted as *locum tenens* for the period between September 19, 1969 and the date of the dissolution of the partnership on November 19, 1969 as ordered by the arbitrator.

At page 17 of the award the arbitrator allowed the applicants 54% of the net assets of the partnership amounting to $8,219, and 54% of the value of the goodwill amounting to $54,000 making a total of $62,219 from which he deducted $10,000 for drugs wrongfully taken away by Dr. Ng from the clinic, $737.50 for cash taken from the till and $10,000 borrowed from the partnership, leaving a balance of $41,481.50 which the arbitrator ordered the respondent to pay to the applicants. On the face of the records it is obvious that the arbitrator had committed a grave error of omission in not deducting another sum of $26,000 which the applicants owed the respondent for purchase of their shares from him.

Without expressing any opinion as to what will finally result in an action to enforce the award, it seems to me that this is not a case where the right to proceed on the award is so clear that leave under section 13 of the Arbitration Ordinance 1950 should be given to enforce it in a summary manner.

Our section 13, is similar to section 12 of the English Arbitration Act 1889. Commenting on section 12 of the English Act, Lord Swinfen Eady M.R. in *Re Boks & Co. and Peters Rushton & Co. Ltd.*[1] said: —

"It is well settled that the procedure by action upon an award is one that ought to be pursued where the objections raised are such as to render the validity of the award a matter of doubt. Where there is no objection to the award or where the objections raised are such as can easily be disposed of, the summary procedure is prompt and convenient; but where there are matters which may gravely affect the validity of the award, then it is proper that they should be dealt with by an action in which the facts can be fully ascertained and no order should be made giving leave to proceed summarily under the award. The practice is stated in *Russell* on Arbitration, 9th edition, at page 322 as follows: 'Now that under section 12 of the Arbitration Act 1889, an award may be enforced as a judgment or order, although the right to bring an action is not thereby taken away, the necessity for an action no longer exists to the same extent as formerly, but an action is still the proper mode of procedure ... where the validity of the award or the right to proceed upon it is so doubtful that leave to enforce it under the above section cannot be obtained.' In my opinion that is applicable to the present case and the validity of the award is so doubtful that leave to enforce it in a summary manner ought not to be given."

and at page 497, Scrutton L.J. said: —

"I accept the view stated by the Master of the Rolls, which entirely agrees with my own experience of the practice — namely that this summary method of enforcing awards is only to be used in reasonably clear cases. It is not intended on the application for leave to enforce an award to try a complicated or disputed or difficult question of law. If it is not reasonably clear that the award should be enforced, the party seeking to enforce it must be left to his remedy by action, when the matter can be raised on proper pleadings and dealt with in the proper form. Without expressing any opinion as to what may ultimately happen it seems to me that this is not a case where the right to proceed on the award is so clear that leave should be given to enforce it in a summary manner."

Four years later the same principle was applied in *Grech* v. *Board of Trade*,[2] where Warrington L.J. said: —

"Execution can only issue under section 12 of the Arbitration Act 1889 by leave of the court. It is well known that leave is only given in clear cases. In other cases it is left to the successful party to the award to bring an action upon it and obtain the judgment in the usual course."

and at page 958 of the report Scrutton L.J. reaffirming the principle he had enunciated in *Re Bok's* case said:—

"Now the court only makes such an order when it is a clear case; if not clear, it leaves the parties to their ordinary legal rights."

The test propounded by Scrutton L.J. in 1919 *In re Boks'* case that

"this summary method of enforcing awards is only to be used in reasonably clear cases,"

was again followed and applied in 1959 in *Union Nationale des Co-operatives Agricoles de Cereales* v. *Robert Catterall & Co. Ltd.*[3] where Lord Evershed M.R. quoted with approval the above principle and said

"I will, therefore, assume that if we are to uphold the view taken by Hinchcliffe J. we must be of opinion that this is a reasonably clear case."

In the instant case I am of the opinion that the validity of the award is so doubtful and the case is far from clear that leave to enforce the award summarily should be refused, and that the successful party to the award should be left to its remedy to enforce it by action.

This application under section 13 of the Arbitration Ordinance 1950 for summary enforcement of the award is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Lim Cheng Poh & Co.; Skrine & Co.*

H.C. & ANOR. v. COMPTROLLER OF INCOME TAX

[O.C.J. (Winslow J.) August 7, 1970]

[Singapore — Income Tax Board of Review Appeal No. 11 of 1969]

Income Tax — Trading stock — Valuation of trading stock on discontinuance or transfer of trade or business — Valuation where there is no sale or transfer for valuable consideration — Income Tax Ordinance (Cap. 166), s. 32.

The company, S. Park Ltd., was incorporated in 1961 and in pursuance of its main objects it purchased over 52 acres of land in Dunearn Road and developed it as a building estate. On August 15, 1963 the T. and C. Properties Ltd. acquired the whole of the issued capital of the company. The company went into voluntary liquidation in December 1963 and the appellants were appointed liquidators. On August 29, 1964 the land belonging to the company was conveyed by the liquidators as vendors to T. and C. Properties Ltd. as purchasers in satisfaction of all the purchasers' share and interest amounting to the sum of $1,757,900. Before the liquidation the company had incurred certain development expenditure and finance charges. The Comptroller of Income Tax assessed the land as trading stock in the sum of $2,291,991 as representing its market value at that date. It was argued on behalf of the appellants that the transaction relating to the land was a mere transfer back by the company (a wholly owned subsidiary of T. and C. Properties Ltd.) to T. and C. Properties Ltd. (the parent company) and that the company in law and in fact made no profit on the land. The act of the liquidators was one of capital realization and not a commercial transaction. Alternatively it was argued that the alleged trading stock should have been valued under section 32(1)(a) of the Income Tax Ordinance in the sum of $1,757,900 and not under paragraph (b) of the section. It was also argued that the development expenditure and the finance charges relating to the land should in any event have been taken into account in the computation of the assessment to tax.

Held, dismissing the appeal: (1) the trading stock of the company was rightly valued under section 32(1)(b) of the Income Tax Ordinance as the land was not sold or transferred for valuable consideration;

(2) as the amount of the expenditure and finance charges had been left out of account in valuing the land in this case, the appellants were not entitled to a deduction for such amount.

Cases referred to:-

(1) *Bradshaw* v. *Blunden, (H.M. Inspector of Taxes) (No. 2)* 39 T.C. 73.

(2) *Wilson Box (Foreign Rights) Ltd.* v. *Brice* [1936] 3 All E.R. 728.

(3) *Baker* v. *Cook* [1937] 3 All E.R. 509.

(4) *Tebrau (Johore) Rubber Syndicate Ltd.* v. *Farmer* 5 T.C. 658.

(5) *Orchard Parks Ltd.* v. *Pogson* 42 T.C. 442.

(6) *Commissioner of Inland Revenue* v. *Nelson* 22 T.C. 716.

(7) *Osborne* v. *Steel Barrel Co. Ltd.* [1942] 1 All E.R. 634.

(8) *Doughty v. Commissioner of Taxes* [1927] A.C. 327.

(9) *Commissioner of Income Tax, Bombay City* v. *Sir Homi Mehta's Executors* 28 I.T.C. 928.

(10) *Californian Copper Syndicate (Ltd. & Reduced)* v. *Harris* 5 T.C. 159.

(11) *Sharkey* v. *Wernher* [1956] A.C. 58.

(12) *Sir Kikabhai Premchand* v. *C.I.T.* [1954] S.C.R. 219.

(13) *Watson Brothers* v. *Hornby* [1942] 2 All E.R. 506.

(14) *Bradshaw* v. *Blunden (H.M. Inspector of Taxes (No. 1)* 36 T.C. 397 at p. 405.

APPEAL FROM INCOME TAX BOARD OF REVIEW.

Michael Kerr Q.C. (*M. Karthigesu* with him) for the appellants.

Michael Nolan Q.C. (*Sat Pal Khattar* with him) for the respondent.

Cur. Adv. Vult.

Winslow J.: The sole though not so simple question that arises for determination on this appeal is whether the appellants who are joint liquidators of S. Park Ltd., to which I shall refer as the company, were correctly charged and assessed to tax by the Comptroller of Income Tax in the sum of $522,116.40, as subsequently confirmed by the Board of Review, by virtue of the provisions of section 32 1(b) of the Income Tax Ordinance (Cap. 166) read in conjunction with section 35(5)(a) thereof on the notional income of its principal asset consisting of development land at S. Park in Dunearn Road as on 28th December, 1963 which is the date of the discontinuance